

*What Every Member of the
Trade Community Should Know About:*

Customs Value



AN INFORMED COMPLIANCE PUBLICATION

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U.S. CUSTOMS and BORDER PROTECTION

NOTICE:

This publication is intended to provide guidance and information to the trade community. It reflects the position on or interpretation of the applicable laws or regulations by U.S. Customs and Border Protection (CBP) as of the date of publication, which is shown on the front cover. It does not in any way replace or supersede those laws or regulations. Only the latest official version of the laws or regulations is authoritative.

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PREFACE

On December 8, 1993, Title VI of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), also known as the Customs Modernization or “Mod” Act, became effective. These provisions amended many sections of the Tariff Act of 1930 and related laws.

Two new concepts that emerge from the Mod Act are “***informed compliance***” and “***shared responsibility***,” which are premised on the idea that in order to maximize voluntary compliance with laws and regulations of U.S. Customs and Border Protection, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the Mod Act imposes a greater obligation on CBP to provide the public with improved information concerning the trade community's rights and responsibilities under customs regulations and related laws. In addition, both the trade and U.S. Customs and Border Protection share responsibility for carrying out these requirements. For example, under Section 484 of the Tariff Act, as amended (19 U.S.C. 1484), the importer of record is responsible for using reasonable care to enter, classify and determine the value of imported merchandise and to provide any other information necessary to enable U.S. Customs and Border Protection to properly assess duties, collect accurate statistics, and determine whether other applicable legal requirements, if any, have been met. CBP is then responsible for fixing the final classification and value of the merchandise. An importer of record's failure to exercise reasonable care could delay release of the merchandise and, in some cases, could result in the imposition of penalties.

The Office of Regulations and Rulings (ORR) has been given a major role in meeting the informed compliance responsibilities of U.S. Customs and Border Protection. In order to provide information to the public, CBP has issued a series of informed compliance publications on new or revised requirements, regulations or procedures, and a variety of classification and valuation issues.

This publication, prepared by the Valuation & Special Programs Branch, Commercial and Trade Facilitation Division, ORR, is prepared as part of a series of informed compliance publications regarding Customs classification and valuation. Customs Value deals with the valuation of merchandise imported into the United States. We sincerely hope that this material, together with seminars and increased access to rulings of U.S. Customs and Border Protection, will help the trade community to improve voluntary compliance with customs laws and to understand the relevant administrative processes.

The material in this publication is provided for general information purposes only. Because many complicated factors can be involved in customs issues, an importer may wish to obtain a ruling under Regulations of U.S. Customs and Border Protection, 19 C.F.R. Part 177, or to obtain advice from an expert who specializes in customs matters, for example, a licensed customs broker, attorney or consultant.

Comments and suggestions are welcomed and should be addressed to the Assistant Commissioner at the Office of Regulations and Rulings, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW, (Mint Annex), Washington, D.C. 20229.

Sandra Bell,
Acting Assistant Commissioner
Office of Regulations and Rulings

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INTRODUCTION

When goods are imported into the Customs Territory of the United States (the fifty states, the District of Columbia and Puerto Rico), they are subject to certain formalities involving the U.S. Customs and Border Protection. In almost all cases, the goods are required to be “entered,” that is, declared to Customs and Border Protection, and are subject to detention and examination by Customs officers to insure compliance with all laws and regulations enforced or administered by the United States Customs and Border Protection. As part of the entry process, goods must be “classified” (determined where in the U.S. tariff system they fall) and their value must be determined. Pursuant to the Customs Modernization Act, it is now the responsibility of the importer of record to use “reasonable care” to “enter,” “classify,” and “value” the goods and provide any other information necessary to enable Customs and Border Protection to properly assess duties, collect accurate statistics, and determine whether all other applicable legal requirements are met.

Under the authority of 19 U.S.Code §1500(a), it is Customs responsibility to fix the final appraisement of merchandise in accordance with 19 U.S. Code §1401a. This occurs after the importer of record, using reasonable care, has filed the declared value with U. S. Customs and Border Protection.

HOW IS IMPORTED MERCHANDISE APPRAISED

All merchandise imported into the United States is subject to appraisement. The Trade Agreements Act of 1979 (the Act), codified at 19 U.S.C. 1401a, et. seq., sets forth the rules for appraisement of imported merchandise. The Act sets forth six different methods of appraisement, and their order of preference. Under the Act, the preferred method of appraisement is **transaction value**. Generally, the appraised value of all merchandise imported into the United States is the transaction value of the goods. In the event the merchandise cannot be appraised on the basis of transaction value, the secondary bases are considered in the following order :

Transaction Value of Identical Merchandise

Transaction Value of Similar Merchandise

Deductive Value

Computed Value

Values if Other Values Cannot be Determined

The importer may request the reversal of Deductive Value and Computed Value at the time the entry summary is filed.

What is Transaction Value?

The transaction value of imported merchandise is the price actually paid or payable for the merchandise when sold for exportation to the United States, plus amounts equal to:

- A. The packing costs incurred by the buyer.
- B. Any selling commission incurred by the buyer.
- C. The value, apportioned as appropriate, of any assist.
- D. Any royalty or license fee that the buyer is required to pay, directly or indirectly, as a condition of the sale.
- E. The proceeds of any subsequent resale, disposal, or use of the imported merchandise that accrue, directly or indirectly, to the seller.

These amounts (items A through E) are added only to the extent that each 1) is not included in the price, and 2) is based on information accurately establishing the amount. If sufficient information is not available, then the transaction value cannot be determined and the next basis of appraisement, in order of precedence, must be considered.

What is the Price Actually Paid or Payable?

The price actually paid or payable for the imported merchandise is the ***total payment***, excluding international freight, insurance, and other C.I.F. charges, that the buyer makes to the seller. This payment may be direct or indirect. Some examples of an indirect payment are when the buyer settles all or part of a debt owed by the seller, or when the seller to settle a debt he owes the buyer reduces the price on a current importation. Such indirect payments are part of the transaction value.

EXAMPLE:

X Company in Dayton, Ohio pays \$2,000 to Y's Toy Factory in Paris, France for a shipment of toys. The \$2,000 consists of \$1,850 for the toys and \$150 for ocean freight and insurance. Y's Toy Factory would have charged X Company \$2,200 for the toys; however, since Y's Toy Factory owed X Company \$350, Y's Toy Factory only charged \$1,850 for this particular shipment of toys. Assuming the transaction is acceptable, what is the transaction value?

The transaction value of the imported merchandise is \$2,200, that is, the sum of the \$1,850 plus the \$350 indirect payment. Because the transaction value excludes C.I.F. charges, the \$150 ocean freight and insurance charge is excluded.

However, if a buyer performs an activity on his own account, other than those listed in the foregoing A through E, then the activity is not considered an indirect payment to the seller, and is not part of the transaction value. This applies even though the buyer's activity might be regarded as benefiting the seller. One example of such activity is advertising.

What are Packing Costs?

Packing costs means the cost of all containers and coverings of whatever nature and of packing, whether for labor or materials, used in placing merchandise in condition, packed ready for shipment to the United States.

What are Selling Commissions?

Selling commission means any commission paid to the seller's agent, who is related to or controlled by, or works for or on behalf of, the manufacturer or the seller.

How is an Assist treated?

The apportioned value of any assist constitutes part of the transaction value of the imported merchandise. First the value of the assist is determined; then the value is pro-rated to the imported merchandise. (See below for further discussion of assists)

How is a Royalty or License Fee treated?

Royalty or license fees that a buyer must pay, directly or indirectly, as a condition of the sale of the imported merchandise for exportation to the United States will be included in the transaction value. Ultimately whether a royalty or license fee is dutiable will depend on 1) whether the buyer had to pay them as a condition of the sale and b) to whom and under what circumstances they were paid. The dutiability status will have to be decided on a case-by-case basis.

How are Proceeds treated?

Any proceeds resulting from the subsequent sale, disposal, or use of the imported merchandise that accrue directly or indirectly to the seller are dutiable.

Are any amounts *excluded* from Transaction Value?

Yes. The amounts to be excluded from transaction value are:

1. The cost, charges, or expenses incurred for transportation, insurance, and related services incident to the international shipment of the goods from the country of exportation to the place of importation in the United States.
2. If identified separately, any reasonable cost or charge incurred for:
 - Constructing, erecting, assembling, maintaining, or providing technical assistance with respect to the goods after importation into the United States, or
 - Transporting the goods after importation.
3. The customs duties and other Federal taxes, including any Federal excise tax for which sellers in the United States are ordinarily liable.

Are there any *limitations* on the use of Transaction Value?

Yes, if any of these limitations are present, then transaction value cannot be used as the appraised value, and the next basis of value will be considered. The limitations can be divided into four groups:

1. Restrictions on the disposition or use of the merchandise.
2. Conditions for which a value cannot be determined.
3. Proceeds of any subsequent resale, disposal or use of the merchandise, accruing to the seller, for which an appropriate adjustment to transaction value cannot be made.
4. Related-party transactions where the transaction value is not acceptable.

When is Transaction Value “*acceptable*” in related-party transactions?

The term “acceptable” means that the relationship between the buyer and seller did not influence the price actually paid or payable. One must examine the circumstances of sale to make this determination.

Alternatively, transaction value can be “acceptable” if the transaction value of the imported merchandise closely approximates any one of the following test values, provided these values relate to merchandise exported to the United States at or about the same time as the imported merchandise:

1. The transaction value of identical merchandise, or of similar merchandise, in sales to unrelated buyers in the United States.
2. The deductive value or computed value for identical merchandise or similar merchandise.

The test values are used for comparison only. They do not form a substitute basis of valuation.

In determining if the transaction value is close to one of the foregoing test values, an adjustment is made if the sales involved differ in:

Commercial levels

Quantity levels

The costs, commissions, values, fees, and proceeds described in A through E as additions to the price actually paid or payable

The costs incurred by the seller in sales in which he and the buyer are not related that are not incurred by the seller in sales in which he and the buyer are related

Questions concerning related parties require a detailed analysis of the transaction and should be reviewed carefully by persons with expertise in the application of the value law.

MORE ABOUT “ASSISTS.”

What is an “assist?”

An assist is any of the items listed below that the buyer of imported merchandise provides directly or indirectly, free of charge or at a reduced cost, for use in the production or sale of merchandise for export to the United States.

Materials, components, parts, and similar items incorporated in the imported merchandise.

Tools, dies, molds, and similar items used in producing the imported merchandise.

Merchandise consumed in producing the imported merchandise.

Engineering, development, artwork, design work, and plans and sketches that are undertaken outside the United States and are necessary for the production of the imported merchandise. "Engineering, development," etc. will not be treated

as an assist if the service or work is 1) performed by a person domiciled within the United States, 2) performed while that person is acting as an employee or agent of the buyer of the imported merchandise, and 3) incidental to other engineering, development, artwork, design work, or plans or sketches undertaken within the United States.

How is the *value* of an assist determined?

In determining the value of an assist, the following rules apply:

1. The value is either a) the cost of acquiring the assist, if acquired by the importer from an unrelated seller, or b) the cost of producing the assist, if produced by the importer or a person related to the importer.
2. The value includes the cost of transporting the assist to the place of production.
3. The value of assists used in producing the imported merchandise is adjusted to reflect use, repairs, modifications, or other factors affecting the value of the assists. Assists of this type include such items as tools, dies, and molds.

EXAMPLE:

If the importer previously used the assist, regardless of whether he acquired or produced it, the original cost of acquisition or of production must be decreased to reflect the use. Alternatively, repairs and modifications may result in the value of the assist having to be adjusted upwards.

4. In the case of engineering, development, artwork, design work, and plans and sketches undertaken elsewhere than in the United States, the value is a) the cost of obtaining copies of the assist, if the assist is available in the public domain; b) the cost of the purchase or lease if the assist was bought or leased by the buyer from an unrelated person; c) the value added outside the United States, if the assist was produced in the United States and one or more foreign countries.

So far as possible, the buyer's commercial record system is used to determine the value of an assist, especially such assists as engineering, development, artwork, design work, and plans and sketches undertaken elsewhere than in the United States.

EXAMPLE:

A U.S. buyer supplied detailed designs to the foreign producer. These designs were necessary to manufacture the imported merchandise. The U.S. importer bought the U.S. produced designs from an engineering company in the U.S. for

submission to his foreign supplier. Should the appraised value of the merchandise include the value of the assist?

No, design work undertaken in the U.S. may not be added to the price actually paid or payable.

EXAMPLE:

A U.S. buyer purchases merchandise from a foreign producer. The price actually paid or payable includes the cost of a U.S. design incorporated in the merchandise. Is there any authority to deduct the cost of the U.S. design from the price actually paid or payable?

No authority exists to deduct such costs when included in the price actually paid or payable.

EXAMPLE:

A U.S. buyer supplied molds free of charge to the foreign producer. The molds were necessary to manufacture merchandise for the U.S. importer. The U.S. importer had some of the molds manufactured by a U.S. company and others manufactured in a third country. Should the appraised value of the merchandise include the value of the molds?

Yes. Molds that are used in the production of the imported merchandise and supplied directly or indirectly and free of charge or at reduced cost by the buyer, regardless of where they are manufactured, are a required addition to be made to transaction value.

How is the value of an assist *apportioned*?

Having determined the value of an assist, the next step is to apportion that value to the imported merchandise. The apportionment is done reasonably and according to generally accepted accounting principles. By the latter is meant any generally recognized consensus or substantial authoritative support regarding the recording and measuring of assets and liabilities and changes therein, the disclosing of information, and the preparing of financial statements.

The method used to apportion the value of the assist depends on the details. For example, suppose the entire anticipated production using the assist is to be exported to the United States. Then the value of the assist could be pro-rated any one of several ways: over the first shipment if the importer wants to pay duty on the entire value at one time, over the number of units produced up to the time of the first shipment, or over the entire anticipated production. If the entire anticipated production is not destined for the

United States, some other method of apportionment will be used that is consistent with generally accepted accounting principles.

WHAT IF THE IMPORTED MERCHANDISE CANNOT BE APPRAISED ON THE BASIS OF TRANSACTION VALUE?

The imported merchandise will be appraised in the order listed at the beginning of this pamphlet.

What is the Transaction Value of Identical Merchandise?

When the transaction value cannot be determined, then the customs value of the imported goods being appraised is the transaction value of identical merchandise. The value of the identical merchandise must be a previously accepted customs value.

What is the Transaction Value of Similar Merchandise?

If merchandise identical to the imported goods cannot be found or an acceptable transaction value for such merchandise does not exist, then the customs value is the transaction value of similar merchandise. The value of the similar merchandise must be a previously accepted customs value.

What is Deductive Value?

If the transaction value of imported merchandise, of identical merchandise, or of similar merchandise cannot be determined, then deductive value is calculated for the merchandise being appraised. Deductive value is the next basis of appraisement at the time the entry summary is filed, to be used unless the importer designates computed value as the preferred method of appraisement. If computed value was chosen and subsequently determined not to exist for customs valuation purposes, then the basis of appraisement reverts to deductive value.

If an assist is involved in a sale, that sale cannot be used in determining deductive value. So any sale to a person who supplies an assist for use in connection with the production or sale for export of the merchandise concerned is disregarded for purposes of determining deductive value.

Basically, deductive value is the resale price in the United States after importation of the goods, with deductions for certain items. Generally, the deductive value is calculated by starting with a unit price and making certain additions to and deductions from that price.

What *deductions* can be made?

Certain items are not part of deductive value and must be deducted from the unit price. These items are as follows:

1. Commissions usually paid or the addition usually made for profit and general expenses, in connection with sales in the U.S. of imported merchandise of the same class or kind as the merchandise concerned
2. Transportation/Insurance Costs
3. Customs Duties/Federal Taxes
4. Value of Further Processing (used only when the merchandise is not sold in the condition as imported)

Can a deduction be made for both commissions and profits?

No, the unit price is reduced by either a commission paid or the addition usually made for profit and general expenses.

What is Computed Value?

The next basis of appraisement is computed value. If customs valuation cannot be based on any of the values previously discussed, then computed value is considered. This value is also the one the importer can select to precede deductive value as a basis of appraisement.

Computed value consists of the sum of the following items:

1. Materials, fabrication, and other processing used in producing the imported merchandise
2. Profit and general expenses
3. Any assist, if not included in items 1 and 2
4. Packing costs

What is the Value If Other Values Cannot Be Determined?

If none of the previous five values can be used to appraise the imported merchandise, then the customs value must be based on a value derived from one of the five previous methods, reasonably adjusted as necessary. The value so determined should be based, to the greatest extent possible, on previously determined values. Only data available in the United States is to be used.

WHAT IS THE IMPORTER OF RECORD'S OBLIGATION TO PROVIDE INFORMATION TO CUSTOMS?

The Mod Act requires the importer of record, or authorized agent, to complete an entry by filing with Customs the declared value of the merchandise, and other documentation and information as is necessary to enable Customs to properly assess duties on the imported merchandise. The Mod Act requires the importer of record to use reasonable care in filing the information with Customs.

Customs Form 7501, the entry summary, requires that the importer of record or authorized agent declare that to the best of the declarant's knowledge, the entry fully discloses the true prices, values, quantities, rebates, drawbacks, fees, commissions and royalties, and is true and correct, and that all goods or services provided to the seller of the merchandise either free or at reduced cost are fully disclosed. In order for an importer to ensure that the value information provided to Customs is complete, it may be necessary for an importer to coordinate with all relevant corporate departments, such as research and development, contracting and shipping (traffic). Failure to do so might be considered a failure to exercise reasonable care, and may lead to delays in releasing your merchandise or to the imposition of penalties.

What records must be kept?

The Tariff Act requires any owner, importer, consignee, importer of record, entry filer or other party who imports merchandise into the U.S. to make, keep and render for examination and inspection, records which pertain to the importation of the merchandise and are normally kept in the ordinary course of business, for a period of time not to exceed five years, from the date of entry. The term "records" includes electronic data. These records would include purchase orders, payment information, shipping records, ledgers, research and development records, etc. In addition, certain records, required for the entry of merchandise must be produced upon demand by Customs. Failure to produce required entry records could lead to delays in release of your merchandise or to the imposition of penalties. See *What Every Member of the Trade Community Should Know About: Records and Recordkeeping Requirements* for additional information.

ADDITIONAL INFORMATION

The Internet

The home page of U.S. Customs and Border Protection on the Internet's World Wide Web, provides the trade community with current, relevant information regarding CBP operations and items of special interest. The site posts information -- which includes proposed regulations, news releases, publications and notices, etc. -- that can be searched, read on-line, printed or downloaded to your personal computer. The web site was established as a trade-friendly mechanism to assist the importing and exporting community. The web site also links to the home pages of many other agencies whose importing or exporting regulations that U.S. Customs and Border Protection helps to enforce. The web site also contains a wealth of information of interest to a broader public than the trade community. For instance, on June 20, 2001, CBP launched the "Know Before You Go" publication and traveler awareness campaign designed to help educate international travelers.

The web address of U.S. Customs and Border Protection is <http://www.cbp.gov>

Customs Regulations

The current edition of *Customs Regulations of the United States* is a loose-leaf, subscription publication available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402; telephone (202) 512-1800. A bound, 2003 edition of Title 19, *Code of Federal Regulations*, which incorporates all changes to the Regulations as of April 1, 2003, is also available for sale from the same address. All proposed and final regulations are published in the *Federal Register*, which is published daily by the Office of the Federal Register, National Archives and Records Administration, and distributed by the Superintendent of Documents. Information about on-line access to the *Federal Register* may be obtained by calling (202) 512-1530 between 7 a.m. and 5 p.m. Eastern time. These notices are also published in the weekly *Customs Bulletin* described below.

Customs Bulletin

The *Customs Bulletin and Decisions* ("Customs Bulletin") is a weekly publication that contains decisions, rulings, regulatory proposals, notices and other information of interest to the trade community. It also contains decisions issued by the U.S. Court of International Trade, as well as customs-related decisions of the U.S. Court of Appeals for the Federal Circuit. Each year, the Government Printing Office publishes bound volumes of the *Customs Bulletin*. Subscriptions may be purchased from the Superintendent of Documents at the address and phone number listed above.

Importing Into the United States

This publication provides an overview of the importing process and contains general information about import requirements. The February 2002 edition of *Importing Into the United States* contains much new and revised material brought about pursuant to the Customs Modernization Act ("Mod Act"). The Mod Act has fundamentally altered the relationship between importers and U.S. Customs and Border Protection by shifting to the importer the legal responsibility for declaring the value, classification, and rate of duty applicable to entered merchandise.

The February 2002 edition contains a section entitled "Informed Compliance." A key component of informed compliance is the shared responsibility between U.S. Customs and Border Protection and the import community, wherein CBP communicates its requirements to the importer, and the importer, in turn, uses reasonable care to assure that CBP is provided accurate and timely data pertaining to his or her importation.

Single copies may be obtained from local offices of U.S. Customs and Border Protection, or from the Office of Public Affairs, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Washington, DC 20229. An on-line version is available at the CBP web site. *Importing Into the United States* is also available for sale, in single copies or bulk orders, from the Superintendent of Documents by calling (202) 512-1800, or by mail from the Superintendent of Documents, Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250-7054.

Informed Compliance Publications

U.S. Customs and Border Protection has prepared a number of Informed Compliance publications in the "*What Every Member of the Trade Community Should Know About...*" series. Check the Internet web site <http://www.cbp.gov> for current publications.

Value Publications

Customs Valuation under the Trade Agreements Act of 1979 is a 96-page book containing a detailed narrative description of the customs valuation system, the customs valuation title of the Trade Agreements Act (§402 of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979 (19 U.S.C. §1401a)), the Statement of Administrative Action which was sent to the U.S. Congress in conjunction with the TAA, regulations (19 C.F.R. §§152.000-152.108) implementing the valuation system (a few sections of the regulations have been amended subsequent to the publication of the book) and questions and answers concerning the valuation system. A copy may be obtained from U.S. Customs and Border Protection, Office of Regulations and Rulings, Value Branch, 1300 Pennsylvania Avenue, NW, (Mint Annex), Washington, D.C. 20229.

Customs Valuation Encyclopedia (with updates) is comprised of relevant statutory provisions, CBP Regulations implementing the statute, portions of the Customs Valuation Code, judicial precedent, and administrative rulings involving application of valuation law. A copy may be purchased for a nominal charge from the Superintendent of Documents, Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250-7054. This publication is also available on the Internet web site of U.S. Customs and Border Protection.

The information provided in this publication is for general information purposes only. Recognizing that many complicated factors may be involved in customs issues, an importer may wish to obtain a ruling under CBP Regulations, 19 C.F.R. Part 177, or obtain advice from an expert (such as a licensed Customs Broker, attorney or consultant) who specializes in customs matters. Reliance solely on the general information in this pamphlet may not be considered reasonable care.

Additional information may also be obtained from U.S. Customs and Border Protection ports of entry. Please consult your telephone directory for an office near you. The listing will be found under U.S. Government, Department of Homeland Security.

“Your Comments are Important”

The Small Business and Regulatory Enforcement Ombudsman and 10 regional Fairness Boards were established to receive comments from small businesses about Federal agency enforcement activities and rate each agency’s responsiveness to small business. If you wish to comment on the enforcement actions of U.S. Customs and Border Protection, call 1-888-REG-FAIR (1-888-734-3247).

REPORT SMUGGLING 1-800-BE-ALERT OR 1-800-NO-DROGA



Visit our Internet web site: <http://www.cbp.gov>